

ESTTA Tracking number: **ESTTA119146**

Filing date: **01/11/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91169590
Party	Defendant Vantage Technologies KnowledgeAssessment, LLC Vantage Technologies Knowledge Assessment, LLC t, L.L.C. 110 Terry Drive Newtown, PA 18940
Correspondence Address	John J. Simkanich Paul & Paul 2900 2000 Market Street Philadelphia, PA 19103 UNITED STATES
Submission	Motion for Sanctions
Filer's Name	John J. Simkanich
Filer's e-mail	jsimkanich@paulandpaul.com
Signature	/john j. simkanich, regis. no. 26,036/
Date	01/11/2007
Attachments	2911.111107.sanctions.motion.PDF (29 pages)(988368 bytes)

Scott Elliot		
31 Pheasant Run		
New Hope, PA 18938		Opposition No. 91169590
Opposer		Serial No. 78396033
v.		
Vantage Technologies Knowledge		
Assessment, LLC		
110 Terry Drive		
Newtown, PA 18940		
Applicant		

In an order dated November 17, 2006, the Trademark Trial and Appeal Board ordered the opposer, Scott Elliot, to produce discovery to applicant, Vantage Technologies Knowledge Assessment, LLC by December 18, 2006 (Exhibit A attached). Opposer HAS NOT produced the ordered discovery.

Applicant's reasonable efforts have included: an email dated December 18, 2006; a confirmation copy of this email being Faxed on December 18, 2006; a second email dated December 21, 2006; a confirmation copy of this second email being Faxed on December 21, 2006; a letter dated January 9, 2007 sent by mail; a copy of that letter being Faxed on January

9, 2007; and a copy of that letter being sent by email to BOTH email addresses on January 9, 2007 (Exhibit C attached).

Opposer has produced absolutely no discovery. Opposer has answered no interrogatories and has produced none of the requested documentary support for each of the allegations recited in his Opposition Notice. Applicant cannot prepare for a discovery deposition of Opposer without the ordered discovery production.

Whereof Applicant urges that Opposer be sanctioned, and that the present Opposition be dismissed with prejudice against Opposer.

Date: Jan 11, 2007

Respectfully submitted,
PAUL & PAUL
Attorneys for Applicant

by: _____

John J. Simkanich, Esq.
2000 Market Street, Suite 2900
Philadelphia, PA 19103
(215) 568-4900
(Fax) 215-567-5057

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the forgoing paper titled, Motion for Sanctions, was served upon the Opposer, service being made on January 11, 2007, by EXPRESS MAIL, EV282454902US, deposited on said date and addressed to counsel for Opposer:

Paul Goodman, Esq.
Cyruli, Shanks & Zizmor, LLP
420 Lexington Avenue, Suite 2020
New York, NY 10170

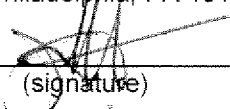
by: _____

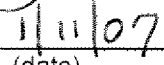
John J. Simkanich
PAUL & PAUL
2000 Market Street, Suite 2900
Philadelphia, PA 19103
Counsel for Vantage Technologies Knowledge
Assessment, LLC

CERTIFICATE OF FILING

I hereby certify that the original of this Motion for Sanctions is being filed with the TTAB, by electronic filing on January 11, 2007, through the eBusiness Center of the United States Patent and Trademark Office, at www.uspto.gov.

by: John J. Simkanich
PAUL & PAUL
2000 Market Street, Suite 2900
Philadelphia, PA 19103



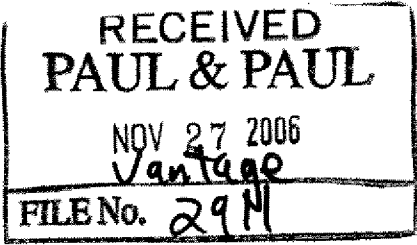
(signature)


(date)

Exhibit A

JF, JJ

DOCKETING



UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: November 17, 2006

Opposition No. 91169590

Scott Elliot

v.

Vantage Technologies Knowledge
Assessment, LLC

Cheryl Butler, Attorney, Trademark Trial and Appeal Board:

In accordance with the institution order dated March 8, 2006, discovery closed on September 24, 2006. On October 4, 2006, the Board suspended proceedings pending disposition of applicant's motion, filed September 26, 2006, to compel responses to applicant's discovery requests; and granted the parties' stipulation to take the discovery depositions of Mr. Elliot after the close of discovery and on September 27 and 29, 2006.

In support of its motion, applicant argues that it served its first set of interrogatories and first request for documents and things on August 17, 2006; that it granted opposer a one-week extension on or about September 15, 2006; and that applicant has not served responses. Applicant indicates that responses to its written discovery requests are necessary for its preparation for the depositions of Mr. Elliot and further requests that the Board reset a time for the depositions.

EXHIBIT A

Opposer has not filed a response to applicant's motion to compel.

Accordingly, applicant's motion to compel is granted as conceded.¹ See Trademark Rule 2.127(a). Moreover, opposer, by failing to timely respond to the discovery requests, has forfeited its right to object to the requests on their merits.² See *Envirotech Corp. v. Compagnie Des Lampes*, 219 USPQ 448 (TTAB 1979). Thus, opposer is allowed **thirty days** from the mailing date of this order to respond to applicant's outstanding first set of interrogatories and first request for production of documents and things. The deposition of Mr. Elliot is to be rescheduled between **forty days** and **sixty days** from the mailing date of this order. (12/27/06) SUN
12-27 1-16
(1/16/07cs)

Testimony is rescheduled as follows:

THE PERIOD FOR DISCOVERY TO CLOSE:	CLOSED
30-day testimony period for party in position of plaintiff to close	March 15, 2007
30-day testimony period for party in position of defendant to close:	May 14, 2007
15-day rebuttal testimony period to close:	June 28, 2007

¹ While applicant's motion has been granted as conceded, applicant is reminded that it did not include a statement of its good faith effort to resolve the discovery dispute or recite circumstances indicating that a good faith effort had, in fact, been undertaken. See Trademark Rule 2.120(e); and TBMP §523.02 (2d ed. rev. 2004). Had applicant's motion been contested, it may have been denied for failure to comply with the special requirement of Trademark Rule 2.120(e).

² Opposer is not required to produce privileged documents or provide privileged information, as its right to claim privilege has not been waived. See e.g., *American Standard, Inc. v. Pfizer*, 3 USPQ2d 1817 (Fed. Cir. 1987). However, where a claim of privilege is invoked, the invoking party must make the claim expressly and provide a description or privilege log, unless the parties otherwise agree

Opposition No. 91169590

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

Exhibit B

CYRULI SHANKS & ZIZMOR LLP

ATTORNEYS AT LAW

[Home](#) | [Practice Areas](#) | [Attorney Bios](#) | [Contact Us](#)**NEW YORK**

420 Lexington Avenue

New York, NY 10170

TEL: (212) 661 6800

FAX: (212) 661 5350

NEW JERSEY

125 State Street

Hackensack, NJ 07601

TEL: (201) 488 5600

FAX: (201) 488 5694

CYRULI SHANKS & ZIZMOR LLP

ATTORNEYS AT LAW

[Home](#) | [Practice Areas](#) | [Attorney Bios](#) | [Contact Us](#)**Robert J. Cyruli****Russell Shanks****Andrew S. Zizmor****PAUL GOODMAN**pgoodman@cszlaw.com

Paul Goodman, of counsel to the firm, has been actively engaged in the practice of computer law for many years, and now concentrates on the representation of Internet and new media clients with respect to both corporate and product level matters.

Katherine Bone**Alfonso DeCicco****Paul Faugno****Paul Goodman****Jeffrey C. Ruderman****Maria E. Russo****Charles R. Sabel****Marc J. Schneider****Jeffrey A. Schwartz**

At the corporate level, Mr. Goodman has represented many clients involved in the merger and acquisition of Web design and services companies, as well as venture capital transactions within the Internet industry. His experience includes reverse mergers of operating companies into publicly-traded shells and is involved in the formation of shell companies. He is currently SEC counsel to two publicly-traded companies and handles all aspects of their '33 and '34 Act compliance. His client base includes two of the largest Web services and development companies in New York City, a major Macintosh software utilities publisher, a Web-based distance learning company, a Web-based video rental company, and various other concerns in the software, consulting, Web and computer reselling businesses. He is a member of the Board of Directors of Aladdin Systems Holding, Inc. (OTCBB:ALHI).

At the product transaction level, Mr. Goodman has represented clients in a wide range of transactions including software publishing, technology licensing, software development and distribution arrangements, software and hardware maintenance agreements, trademarks, software patents and copyrights, foreign localization and OEM licensing, Web site development ventures, purchase and sale of Web sites, advertising arrangements and purchase and sale of domain names. Typical clients include software publishing companies, Web site development companies, computer resellers and consulting firms.

Mr. Goodman received a Juris Doctor degree from the City University of New York and received a Bachelors and Masters Degree in Computer Science from Queens College. He was formerly a faculty member of the Queens College Computer Science Department and is the author of five books on programming as well as a book on drafting Internet contracts soon to be published by Matthew Bender & Company.

Mr. Goodman is admitted to practice law in the State of New York.

EXHIBIT "B"



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TTABVUE. Trademark Trial and Appeal Board Inquiry System

Opposition

Number: 91169590**Filing Date:** 03/07/2006**Status:** Pending**Status Date:** 03/08/2006**Interlocutory Attorney:** CHERYL A BUTLER**Defendant****Name:** Vantage Technologies Knowledge Assessment, LLC**Correspondence:** John J. Simkanich
Paul & Paul
2900 2000 Market Street
Philadelphia, PA 19103**Serial #:** 78396033**Application Status:** Opposition Pending**Mark:** INTELLIMETRIC**Plaintiff****Name:** Scott Elliott**Correspondence:** Paul Goodman
Cyruli, Shanks & Zizmor, LLP
420 Lexington Avenue, Suite 2020
New York, NY 10170
lawyny@aol.com**Prosecution History**

#	Date	History Text	Due Date
8	11/17/2006	D'S MOTION TO COMPEL GRANTED; TD RESET	
7	10/04/2006	P'S MOT TO SUSP PEND DISP OUTSTNDNG MOT	
6	09/26/2006	D'S MOTION TO COMPEL DISCOVERY	
5	09/21/2006	STIPULATION FOR AN EXTENSION OF TIME	
4	04/18/2006	ANSWER	
3	03/08/2006	PENDING, INSTITUTED	
2	03/08/2006	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	04/17/2006
1	03/07/2006	FILED AND FEE	

Results as of 01/09/2007 11:06 AM

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Exhibit C

John Simkanich

From: John Simkanich
Sent: Monday, December 18, 2006 10:50 AM
To: 'pgoodman@cszlaw.com'
Subject: our file 2911, TTAB Opposition 91169590
Importance: High

Paul Goodman, Esq.
Cyruli Shanks & Zizmore, LLP
420 Lexington Avenue
New York, NY 10170

RE: Trademark Opposition 91169590
Elliot v. Vantage
TTAB Discovery Order of November 17, 2006

Hi Paul:

We placed at least three telephone calls to your office last week in an effort to speak to you about Scott Elliot, and whether or not the requested discovery, which was addressed by the TTAB Order dated November 17, 2006 would be forth coming. We were unable to speak to you and we have not had our calls returned.

The discovery is due 30 days from the date of the Order, which is today, as yesterday was a Sunday.

We would also like to know if you will produce Mr. Elliot for testimony during the last week of December, specifically December 27-29, 2006, which is within the 40-60 day period stated in the Order. Please advise us.

Best regards, John Simkanich

12/18/2006

EXHIBIT C

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Subject: our file 2911, TTAB Opposition 91169590
Importance: High

Paul Goodman, Esq.
Cyruli Shanks & Zizmore, LLP
420 Lexington Avenue
New York, NY 10170

CONFIRMATION
(by Fax)

RE: Trademark Opposition 91169590
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12/18/2006

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FAX COVER SHEET

Date: December 18, 2006 Fax No: 212-661-5350

Please deliver the following pages to:

Name: Paul Goodman, Esq.

From: John Simkanich

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IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL: _____

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Our Fax No: (215) 567-5057

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 CONNECTION ID
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Date: December 18, 2006 Fax No: 212-661-5350

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Paul & Paul File No: _____ Your Reference No: _____

Client: Opposition # 91169590

Message to Client: _____

John Simkanich

From: John Simkanich
Sent: Thursday, December 21, 2006 10:37 AM
To: 'pgoodman@cszlaw.com'
Cc: John McNulty
Subject: Opposition 91169590, our file 2911, Elliot v. Vantage
Importance: High

Paul Goodman, Esq.
Cyruli Shanks & Zizmore, LLP
420 Lexington Avenue
New York, NY 10170

RE: Trademark Opposition 91169590
Elliot v. Vantage

Dear Paul:

This will confirm that we have been trying to solicit a response from you on the discovery that is now overdue from Scott Elliot. He is now in violation of the TTAB Order of November 17, 2006.

The last time I called your offices your receptionist stated that you were on the telephone. The call before that we were informed that you were out for lunch. Each time we left messages in your office voice mail.

We have had no response to the email sent to you on December 18, 2006, with a confirmation copy sent by facsimile to your offices.

Kindly inform me whether this opposition remains a viable matter, or has Mr. Elliot decided to walk away from it.

Best regards, John Simkanich

12/21/2006

John Simkanich

From: John Simkanich
Sent: Thursday, December 21, 2006 10:37 AM
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Cc: John McNulty
Subject: Opposition 91169590, our file 2911, Elliot v. Vantage
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CONFIRMATION
(by Fax)

Paul Goodman, Esq.
Cyruli Shanks & Zizmore, LLP
420 Lexington Avenue
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Best regards, John Simkanich

12/21/2006

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CONNECTION ID
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PGS. SENT 2
RESULT OK

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Date: December 21, 2006 Fax No: 212-661-5350

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From: John Simkanich

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Paul & Paul File No: _____ Your Reference No: _____

Client: Opposition # 91169590

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January 9, 2007

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1957-1992

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Paul Goodman, Esq.
Cyruli Shanks & Zizmor LLP
420 Lexington Avenue
New York, NY 10170

VIA FAX
(212) 661-5350
email: pgoodman@cszlaw.com
email: lawnyny@aol.com
and mail

RE: Trademark Opposition 91169590
Elliot v. Vantage
Our file 2911

Dear Paul:

We believe we have made every reasonable effort to obtain the Elliot discovery from you. This includes numerous telephone calls to you at your offices and voice mails left, numerous emails, and numerous Faxes.

We have not received any Scott Elliot discovery materials. We have not had a reply from you to our telephone calls, our emails, nor our Fax confirmation transmissions.

Vantage is unable to adequately prepare for the Scott Elliot deposition. Moreover, given Mr. Elliot's complete refusal to respond to discovery requests, Vantage has no reason to anticipate that he would show for his discovery deposition.

Vantage is therefore forced to file another motion before the Trademark Trial and Appeal Board, this motion being for sanctions.

Best regards.

Very truly yours,


John J. Simkanich

cc: JFN
JJS/jj

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO 0433
CONNECTION TEL 12126615350
CONNECTION ID
ST. TIME 01/09 12:33
USAGE T 00'24
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Date: January 9, 2007 Fax No: 212-661-5350

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Our Phone No: (215) 568-4900 Our Fax No: (215) 567-5057

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ORDINARY MAIL.

Paul & Paul File No: 2911 Your Reference No: _____

Client: _____

Message to Client: Trademark Opposition 91169590

LAW OFFICES OF

PAUL & PAUL

2000 MARKET STREET

SUITE 2900

PHILADELPHIA, PA. 19103

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Date: January 9, 2007 Fax No: 212-661-5350

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Our Phone No: (215) 568-4900

Our Fax No: (215) 567-5057

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Paul & Paul File No: 2911 Your Reference No: _____

Client: _____

Message to Client: Trademark Opposition 91169590

Elliot v. Vantage

John Simkanich

From: postmaster@paulandpaul.com
Sent: Tuesday, January 09, 2007 12:11 PM
To: John Simkanich
Subject: Delivery Status Notification (Relay)



ATT51006.txt (412 TTAB Opposition
B) 91169590, Eli...

This is an automatically generated Delivery Status Notification.

Your message has been successfully relayed to the following recipients, but the requested delivery status notifications may not be generated by the destination.

lawnyny@aol.com

John Simkanich

From: John Simkanich
Sent: Tuesday, January 09, 2007 12:10 PM
To: 'lawyny@aol.com'
Subject: TTAB Opposition 91169590, Elliot v. Vantage
Importance: High

Hi Paul: See the attached notice letter. Best regards, John

HENRY N. PAUL, JR.
1925-1987
E. ARTHUR THOMPSON
1957-1992

JAMES C. MCCONNOR
JOHN F. McNULTY
ALEX R. SLUZAS
OURMAZD S. OJAN
JOHN J. SIMKANICH
JOHN S. CHILD, JR.
JOHN E. DRACH

LAW OFFICES OF
PAUL & PAUL
2000 MARKET STREET
SUITE 2900
PHILADELPHIA, PA. 19103
(215) 568-4900

PATENTS, TRADEMARKS, COPYRIGHTS
AND
INTELLECTUAL PROPERTY CAUSES
FAX 215-567-5057

January 9, 2007

Paul Goodman, Esq.
Cyrul Shanks & Zizmor LLP
420 Lexington Avenue
New York, NY 10170

VIA FAX
(212) 661-5350
email: pgoodman@cszlaw.com
email: lawnyny@aol.com
and mail

RE: Trademark Opposition 91169590
Elliot v. Vantage
Our file 2911

Dear Paul:

We believe we have made every reasonable effort to obtain the Elliot discovery from you. This includes numerous telephone calls to you at your offices and voice mails left, numerous emails, and numerous Faxes.

We have not received any Scott Elliot discovery materials. We have not had a reply from you to our telephone calls, our emails, nor our Fax confirmation transmissions.

Vantage is unable to adequately prepare for the Scott Elliot deposition. Moreover, given Mr. Elliot's complete refusal to respond to discovery requests, Vantage has no reason to anticipate that he would show for his discovery deposition.

Vantage is therefore forced to file another motion before the Trademark Trial and Appeal Board, this motion being for sanctions.

Best regards,

Very truly yours,


John J. Simkanich

cc: JFN
JJS/jj

John Simkanich

From: System Administrator
To: Paul R. Goodman
Sent: Tuesday, January 09, 2007 12:09 PM
Subject: Delivered:TTAB Opposition 911169590, Elliot v. Vantage

Your message

To: Paul R. Goodman
Subject: TTAB Opposition 911169590, Elliot v. Vantage
Sent: 1/9/2007 12:08 PM

was delivered to the following recipient(s):

Paul R. Goodman on 1/9/2007 12:07 PM

HENRY N. PAUL, JR.
1925-1987
E. ARTHUR THOMPSON
1957-1992

JAMES C. MCCONNON
JOHN F. MCNULTY
ALEX R. SLUZAS
OURMAZO S. OJAN
JOHN J. SIMKANICH
JOHN S. CHILD, JR.
JOHN E. DRACH

LAW OFFICES OF
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FAX 215-567-5052

January 9, 2007

Paul Goodman, Esq.
Cyruli Shanks & Zizmor LLP
420 Lexington Avenue
New York, NY 10170

VIA FAX
(212) 661-5350
email: pgoodman@cszlaw.com
email: lawnyny@aol.com
and mail

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cc: JFN
JJS/jj

John Simkanich

From: John Simkanich
Sent: Tuesday, January 09, 2007 12:08 PM
To: 'pgoodman@cszlaw.com'
Subject: TTAB Opposition 911169590, Elliot v. Vantage
Importance: High

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